REMARKS

Claims 1, 23, and 29 have been amended. Claims 1-37 remain pending in the present application. No new matter has been added. In view of the above amendments and the following remarks, it is respectfully submitted that all of the presently pending claims are allowable.

With respect to the appearance of the word "section" that the Examiner noted in the objection to claim 1, the appearance of this word in the prior listing of claims was the result of a typographical error that occurred as the claim was being typed. Since this inadvertent change was not intended by the Applicants, it does not amount to a formal claim amendment. Thus, Applicants have restored the original wording ("selection") without any underlining or strike throughs because such notations are only for intentional changes of claim language.

Claims 1-12, 14-34, 36, and 37 stand rejected under 35 U.S.C. § 102(e) as being anticipated by United States Patent No. 6,161,142 to Wolfe et al. ("Wolfe"). Applicants have amended claim 1 to recite that "wherein the broadcast element selector automatically selects non-advertisement broadcast elements without any selection by the user of the non-advertisement broadcast elements that are provided to the user." Support for this amendment is found at least in pages 15, line 1, to page 16, line 6. In contrast, Wolfe does not teach such an automatic selection. In the latest office action, the Examiner points to column 5, lines 57-67. This portion of Wolfe reads as follows:

> From decisional block 70, the program also has the option of proceeding via decisional block 80 to block 82 which is responsible for the distribution of one or several free programs which may be used for controlling the local PCs 12, 14 . . . 16 to play the received music and/or to interface with the CPU 10 (which may be made available through a web page on the Internet). Such programs downloaded from the web page, which operate in conjunction with the system of the present invention, provide various functions including ***allowing subscribers*** to automatically call up the CPU 10, ***automatically make music selections and the like***.

The automatic music selection referred to here is not the kind recited in the patent, that is, is not the kind that excludes the user from selecting the non-advertisement content to be provided to the

user. In Wolfe, in contrast, a user is involved with the selection of music to be delivered. In the passage from Wolfe, the programs are for "allowing subscribers...[to] automatically make music selections." In the claim, the automatic selection excludes user involvement as to the specific non-advertisement works to be delivered; in Wolfe, rather than exclude users the automatic selection involves users by allowing a user to effectuate the selection and delivery of music through automatic communication means that is implemented by the downloadable programs referred to in the passage. In Wolfe, the specific music selections of the user are communicated automatically, but this is in contrast to the user-free content selection of the claimed invention. In Wolfe, the system "present[s] to each individual a menu of music selection which best fits the individual's preferences and music taste." (Column 5, lines 6-8). Unlike the claimed invention, the Wolfe system takes upon itself the "task of responding to a subscriber's request for particular musical works." (Column 6, lines 25-26). The claimed invention does not allow a user to select individual works of music or other non-advertisement broadcast elements because it is intended instead to mimic the lack of song selection involved in regular radio broadcasts, albeit with the qualification that the songs that are selected without user involvement are intended to align with the user's tastes as revealed, for example, in his profile. Accordingly, Applicants submit that Wolfe does not anticipate claim 1.

Since claims 23 and 29 have been also been amended to recite an automatic selection of broadcast or audio elements, Applicants submit that these claims and dependent claims 24-34, 36, and 37 are patentable for at least the same reasons given above.

Claims 13 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Wolfe in view of United States Patent No. 6,317,784 to Mackintosh. Claims 13 and 35 are patentable for at least the same reasons given above.

REMARKS

In view of the amendments and remarks submitted above, Applicants respectfully submit that all of the now pending claims are in condition for allowance. All issues raised by the Examiner having been addressed, an early and favorable action on the merits is thus earnestly requested.

Respectfully submitted,

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